

ASSISTED LIVING ADVISORY COUNCIL (ALAC)
MINUTES

March 18, 2003
10:00 a.m. – 12:00 p.m.
Via Video-Teleconference
Carson City- 505 E. King St. Rm. 103 (Kinhead Bldg.)
Las Vegas- 1161 S. Valley View Conference Rm. (Special Children's Clinic)

COUNCIL MEMBERS PRESENT

Las Vegas-
Terry Smith, Pharmacist
Saraah Ganti, RFA
June Kern, RN, RFA
Martha E. Hilario, RFA
Mark McConnell, RFA (proxy for) Margaret McConnell, RN, RFA

Carson City-
Dell Williams, RFA
John Gabor, RFA
Wendy Simons, RFA

COUNCIL MEMBERS EXCUSED

Samuel T. Gee, RFA
Tamara Greene, LSW
Barbara Lawrence, RFA

COUNCIL MEMBERS NOT EXCUSED

Sandy Mrkacek, RFA

HEALTH DIVISION STAFF PRESENT

Las Vegas-
Lisa Jones, HFS IV
Paul Shubert, HFS III
Monica Schlegel, Intern-UNLV

Carson City-
Pam Graham, Chief BLC
Jennifer Dunaway, HFS IV
Debbie Humphreys, HFS III

ATTORNEY GENERAL STAFF PRESENT

Linda Anderson, Deputy Attorney General

INVITED GUESTS

David Breedlove, DLB Insurance Marketing
Bruce McAnnany, Division for Aging Services

Wendy Simons opened the meeting at approximately 10:05am with introductions from all present.

Wendy introduced Dave Breedlove an insurance agent from D.L.B. Insurance Marketing. Dave briefly informed everyone concerning liability insurance in assisted living and residential care industry. Dave indicated that he only has two underwriting agencies for assisted living. Church Mutual, which primarily does large accounts and Western World a direct program through DLB, accepting category 1 and 2

facilities. Neither company will insure mental health facilities. Pricing on category 2 facilities with Western World is approximately \$396/bed for 1 million dollars general liability and professional liability. Church Mutual varies on rates depending on the size of the facility. Colony Health has agreed on a test program inclusive at a rate of \$550/bed for Mental Health facilities. The cost can vary depending on the number of beds, prior claims, risks, etc. This company is a "claims made company" which means, any claim filed must be in the same year that the policy was in force. Dave indicated that Western world would not accept any business without a survey and loss history report. If there are any survey deficiencies a plan of correction accepted by BLC must be attached. It is their discretion whether or not they will insure the facility based on the report. Dave discussed that the licensing language is another issue; because some facilities have multiple endorsements, such as mental illness, elderly or disabled and others. In order to satisfy some underwriters; the facility must indicate that they have no one that has mental illness and the facility only accepts persons that are aged or disabled or vice versa. New facilities cannot receive a certificate of insurance until BLC conducts a survey and has an acceptable plan of correction.

Pam Graham discussed Assembly Bill (AB) 350 and explained in summary that it prohibits the State Board of Health (BOH) from requiring certain residential facilities to purchase or maintain a policy of liability insurance. Pam felt this may supersede the variance requests being presented at the BOH meeting this month.

Dave Breedlove spoke about possible consequences that facilities may incur if there are lapses in liability insurance coverage and how the state's eliminating the need to obtain insurance could cause an erosion of the ability of those facilities wanting insurance to obtain the same. Dave will be reviewing AB 326 and AB 350 and will report to Mark McConnell for his expert input as a representative of the insurance industry.

Erick Novack a representative for the Model Assisted Living Committee (MALC) for low income residents was unable to attend but asked to be rescheduled.

Pam explained that A.B. 326 was introduced to provide for the licensing and regulation of facilities for assisted living.

Wendy discussed A.B. 326 and the terminology used in describing "Assisted Living" and presented the negative impact it could have on our industry. Larry Fry, Coalition of Assisted Residential Environments (CARE), Legislative Chair from Reno, NV. and Wendy Simons provided us with written information indicating strong opposition regarding this bill (see attachments). Mark McConnell and Saraah Ganti spoke on their concerns regarding what impact this bill would have on our present Assisted Living facilities. Freedom of choice, fire regulations, county restrictions, and federal guidelines were all issues of concern regarding this changed definition of "Assisted Living". Dell Williams had concerns with the impact that this would have on the BLC, the effect of the Medicaid waiver program, and what problem this bill was designed to fix. Wendy did inform us of the strong support of this bill from AARP.

Bruce McAnnany from the Division of Aging spoke on Surety Bond issues. There is a bill in the legislature designed to move the Surety Bond to the Health Division. The amount of the Surety Bond will be reduced for the \$10,000 to \$5,000, \$50,000 to \$25,000 and \$100,000 to \$50,000. The Division for Aging Services (DAS) will continue to keep the mediation part of the surety bond requirements. Wendy asked how many claims had been filed. Bruce stated that 6 cases had been heard at the mediation level (facility level) and 2 at the Hearing Officer level. Bruce feels that the Surety Bond has had a positive effect in that it has encouraged mediation at the facility level.

Monica Schlegel spoke on the Complaint Task Force meetings. Discussion regarding the need for increased membership on this task force team was addressed. Margaret McConnell will be joining the task force and it had been suggested that the task force would appreciate input through telephone calls, written comments, etc. The next meeting will be March 27, 2003 from 1:30-3:00 at the BLC in Las Vegas. Anyone interested in serving on this task force may contact Monica at 486-6515. Teleconferencing is going to be made available with the Carson City Office. Pam Graham indicated that the purpose of the committee is to investigate substantiated vs. unsubstantiated complaints and comprise data that will be presented to the Board of Health concerning complaint methodologies. It is important to have active

participation and that ALAC members involve themselves to offer input into this process. Monica discussed the committee's concerns regarding how we might change the way unsubstantiated complaints are handled. It was the task forces recommendation that a simple letter be sent to the facility indicating survey outcome. It was also discussed that we provide education to reduce complaints using monies collected from penalties. Education would be provided to all levels of persons involved in our industry. Paul Shubert provided the task force with a cost analysis of complaint investigations. There was an indication that complaints received by DAS and Metro, are not anonymous, because all persons must identify themselves. The BLC does not require identification in keeping with federal guidelines.

Lisa Jones provided us with a chart of collected data on substantiated complaints in the year 2002.

SUBSTANTIATED COMPLAINTS 2002

All Complaints to BLC			All Provider Types	%	AGC/Z from All Sources	AGC/Z Anonymous
	Substantiated vs Total		Substantiated vs Anonymous			
Las Vegas Office	176 vs 876	20.09%	15 vs 130	11.54%	80/227 or 35.24%	7/43 or 16.28%
Carson City Office	111 vs 358	31.01%	7 vs 28	25%	28/57 or 49.12%	2/6 or 33.33%
State of Nevada	287 vs 1234	23.26%	22 vs 158	13.92%	108/284 or 38.03%	9/49 or 18.37%

This study indicates that anonymous complaints are substantiated approximately half as many times as complaints wherein the complainant identifies themselves for assisted living facility complaints.

Paul Shubert indicated that he would provide information concerning the cost analysis of conducting complaint investigations as follows: (these numbers are based on Southern Nevada data only)

Surveyor Cost/Hour	Surveyor Hours	Nature and Number of Investigations	Total
\$95.00	7.8 hours	Immediate Jeopardy (IJ) – 14	\$11,856.00
\$95.00	6 hours	Unlicensed Adult Group Care - 9	\$5,130.00
Total			\$16,986.00

Immediate Jeopardy and Unlicensed Facilities are the only investigations that are currently being scheduled due to staff shortages. All other investigations are included as part of the annual survey. Paul also analyzed the costs associated with conducting Non-IJ High and Medium priority complaints during 2002 in Southern Nevada as follows:

Surveyor Cost/Hour	Surveyor Hours	Nature and Number of Investigations	Total
\$95.00	7.8 hours	Non-IJ High/Medium – (170-50 =120)	\$88,920.00
Total (IJ, Non IJ High/Med, Unlicensed AGC)		Approximately 50 are scheduled within timeframes along with annual surveys	\$105,906.00

It has been suggested that creative methods be identified to fund complaint investigations down to the High and Medium priority levels.

Wendy Simons made a motion to approve the minutes for the last meeting, seconded by Martha Hilario, the minutes were approved as corrected.

Paul Shubert reported on the status of recommended regulation changes. Draft #5 is our current report with changes noted. Any additional input must be received by Paul or Debbie by March 28th. A final draft will be prepared after 3/28/03 for distribution to all facilities and interested parties, with an announcement for public workshops.

Pam discussed fee methodology. Data collection is being compiled and fee regulation changes will be submitted at the September Board of Health meeting.

Jennifer Dunaway reported that the State Fire Marshall was not going to change occupancy classification for Category 2 residential facilities for groups of 10 beds or less. The Fire Marshall requires an "I" classification if the residential facility were to exceed 10 beds with Category 2 residents.

Wendy discussed E457 (expanding the Medicaid budget) designed to expand the amount of money that can be provided for Medicaid Waiver recipients.

Everyone was thanked for their participation and enthusiasm. There being no further discussion, Wendy Simons adjourned the meeting at approximately 12:00

These minutes prepared by: June Kern

Attachments follow.

Coalition of Assisted Residential Environments: CARE
10580 N. McCarran Blvd., #115-376
Reno, NV 89503

Assisted Living Advisory Council

March 16, 2003

Re: AB 326

Dear Council Member,

I am Larry Fry, and I am the Legislative Chair for CARE. CARE represents over 60 assisted living facilities with over 1,400 beds in Nevada. Our membership includes a wide range of licensed residential care facilities (large and small, private pay and SSI/Welfare/Medicaid Waiver). We serve a wide range of the varied assisted living needs of our seniors, including the elderly, MH/MR clients and seniors with Alzheimer's disease. The one common goal we share is to provide assistance with the activities of daily living for our residents so that their quality of life is maintained to the highest level possible. We are very concerned about the introduction of AB 326, which proposes to drastically change the definition of "Assisted Living" in Nevada. This new definition would have grave and costly implications for the operation and regulation of Nevada's 350 licensed assisted living facilities and their 5,000 beds.

The meaning of "Assisted Living" as it has evolved in Nevada and across the country is well established. The American Heritage Dictionary defines "Assisted Living" as: "A living arrangement in which people with special needs, especially seniors with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medications". If one looks at what other states have adopted as definitions, assisted living focuses on delivery of care and assistance with activities of daily living (ADL's) as this occurs in a variety of living situations. Every state is different, and that offers flexibility and choice for the senior in terms of their desired living environment.

In contrast to what assisted living in Nevada has evolved into today, the proposed legislation would:

1. Mandate fully self-contained individual living units as a core part of the new "Assisted Living" definition. This would include kitchenettes, and the false assumption that elderly, frail seniors can safely function in them. Assisted Living facilities (ALF's) in Nevada and across the country are specifically designed without individual kitchen units because the resident is at the point where they cannot always safely and properly prepare and cook their own meals. All ALF's are equipped with separate kitchens staffed and prepared to provide individualized meal service based upon a residents dietary needs and desires. This has been established and regulated in Nevada since 1967!
2. Make all living units one-person quarters. That primary resident would decide himself if he/she wanted a room mate or not. Many ALF's have shared roommate situations, at the consent of both roommates. This is a viable option, which occurs for a variety of reasons, but the proposed bill dictates that any facility using such an arrangement shall not be considered an assisted living facility.

3. Make it illegal for any facility in Nevada to use the term “Assisted Living” unless it was licensed as such under the proposed new definition. Many residential facilities have been offering assisted living services for as long as 25 years, and have adopted the term Assisted Living to describe the services provided. This specifically entails assistance with activities of daily living, such as bathing, dressing, and medication management and meal preparation. The trend over the last 15 years has been to conceptualize the services we provide as “assisted living”, because this term appropriately describes what we do for our residents to help them maintain their quality of life, as independently as possible. AB 326 Mistakenly focuses on a very narrow, and inappropriate definition of the building, ignoring the wide variety of settings where assisted living currently takes place. Assisted Living is not a building!

4. Affect the Medicaid Group Care Waiver program, and potentially reduce living choices for those program clients. This program saves the state considerable resources and allows for greater living choices for elderly clients. We believe that AB 326 would jeopardize this.

5. Force the Health Division to re-write and duplicate existing regulations for this new class of “Assisted Living” facilities. We believe there would be a substantial cost increase associated with this. The Bureau of Licensure’s (BLC) budget does not operate out of the general fund, it is fee-based, and they are attempting to do their current job with depleted financial and manpower resources. With the state budget in fiscal crisis, this is not the time to further over burden the BLC’s duties.

6. We question what problem this bill is designed to fix. There isn’t one identified in the bill’s preamble.

As a major provider of assisted living in Nevada, we would have thought that the proponents of this misguided bill would have sought our input early on in the process. Quite the contrary, we have not been contacted for any input whatsoever. This leads us to question the reason or motivation behind the bill.

This bill shows no comprehension of the care needs of frail seniors who can no longer live independently. In short, adoption of this new definition would turn the assisted living industry on its head, for no beneficial reason, and place many more seniors at risk to themselves and others by placing them in living environments which outstrip their capabilities to safely function in them. Here in Nevada, the agencies, training, licensing and residents rights oversights are in place already to ensure the desired outcome of quality care for our frail seniors. Why reinvent the wheel, especially in a time of fiscal crisis for the state?

The Assisted Living Facilities of America (ALFA) President Paul R. Willging recently stated that assisted living regulations need to emphasize consumer choice and state regulatory flexibility. This is why a single definition of assisted living failed to emerge at the national level when a congressional task force tried to do so. This is why each state has a different definition of assisted living, as mentioned earlier. The very narrow, ill-conceived, “building focused” definition proposed by AB 326 would thwart the delivery of assisted living here in Nevada, reducing the choices for our seniors, raising costs, and compromise our seniors’ safety. Remember, Assisted Living is not a building!

CARE opposes AB 326 as a piece of misguided legislation, which will be expensive to implement and administer. You can rest assured that we will be present to express our concerns as this bill progresses in the legislature.

Sincerely,

Larry Fry
CARE Legislative Chair

Concerns with the DRAFT Assisted Living Definition

Prepared by Wendy Simons

Coalition of Assisted Residential Environments (CARE)

3/13/03

- Do we need a new definition?
- What is the fiscal impact to the BLC?
- What will be the impact on the Medicaid waiver program?
- Will this force current facilities operating as Assisted Living Facilities to cease using the name established by a national standard option of care for the last 11 years?
- What problem is this bill designed to fix?
- How does the proposed definition square with the current NV regulations in terms of what services are allowed? Does this definition require ALF's to do anything different from what they are already doing?

Concerns with Draft Terminology

- What is meant by the term "fully self-contained units"?
- If so, is it going to require that all facilities put kitchenettes in every unit to continue to qualify for the definition of AL?
 - These pose a danger in ALF's due to declining capabilities of residents
- What constitutes "oversight of personal and supportive services"?
- How are health related services to be defined? (Beyond medication management).
- What is meant by medication management? Would it allow for nurse delegation to unlicensed caregivers? Can it only be done by RN's? Does the term only refer to supervision of self-administration or is it meant to encompass actual administration of meds? And will it include insulin injections? Etc. etc.
- The statement that AL does not provide 24 hour comprehensive nursing assistance or intensive therapies for residents with complex or unstable medical conditions requires further clarification of intent.
 - Would this preclude hospice care?
 - Would it preclude a third party provider (private duty nurse, home health agency) from coming to the ALF and supplementing care not allowed by regulation by staff?
 - Could it have some inadvertent implications for Medicaid ALF's, where residents must meet a nursing home eligibility standard to qualify?
- Is it a mistake to define AL by a list of specific medical or physical conditions?
Ex: To say that AL is meant to serve people with cognitive impairments, does that include late stage Alzheimer's disease?